



February 22, 2002

ENGROSSED SENATE BILL No. 341

DIGEST OF SB 341 (Updated February 20, 2002 12:13 PM - DI 94)

Citations Affected: IC 36-7.

Synopsis: Land use. Specifies that review of a land use decision of a legislative body or the board of zoning appeals by certiorari is initiated by filing a petition with the court. Sets forth the persons that a remonstrator must notify of the filing of a petition for writ of certiorari. Provides that an adverse party is not required to be named as a party to the petition for writ of certiorari. Eliminates the following two members of the Indianapolis metropolitan development commission: (1) A member appointed by the mayor. (2) A member who represents township legislative bodies. Repeals a provision requiring a consolidated city to create an advisory committee of citizens interested in problems of planning and zoning if the consolidated city prepares or revises a comprehensive plan for a township. Repeals a provision allowing a township in a county that contains a consolidated city to require that a plan commission hold a public hearing within the township before an amendment to a zoning map may be made. Provides that for certain plan commissions operating under a joinder agreement either a township trustee or a citizen member serves on the plan commission.

Effective: July 1, 2002.

Clark

(HOUSE SPONSORS — HINKLE, STEVENSON)

January 8, 2002, read first time and referred to Committee on Governmental and Regulatory Affairs.

January 24, 2002, reported favorably — Do Pass.

February 1, 2002, read second time, ordered engrossed. Engrossed.

February 4, 2002, read third time, passed. Yeas 50, nays 0.

HOUSE ACTION

February 11, 2002, read first time and referred to Committee on Local Government.

February 21, 2002, amended, reported — Do Pass.

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February 22, 2002

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

ENGROSSED SENATE BILL No. 341

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 36-7-4-207 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 207. (a) ADVISORY.
3 In a city having a park board and a city civil engineer, the city plan
4 commission consists of nine (9) members, as follows:
5 (1) One (1) member appointed by the city legislative body from
6 its membership.
7 (2) One (1) member appointed by the park board from its
8 membership.
9 (3) One (1) member or designated representative appointed by the
10 city works board.
11 (4) The city civil engineer or a qualified assistant appointed by the
12 city civil engineer.
13 (5) Five (5) citizen members, of whom no more than three (3)
14 may be of the same political party, appointed by the city
15 executive.
16 (b) ADVISORY. If a city lacks either a park board or a city civil
17 engineer, or both, subsection (a) does not apply. In such a city or in any

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town, the municipal plan commission consists of seven (7) members, as follows:

(1) The municipal legislative body shall appoint three (3) persons, who must be elected or appointed municipal officials or employees in the municipal government, as members.

(2) The municipal executive shall appoint four (4) citizen members, of whom no more than two (2) may be of the same political party.

(c) AREA. To provide equitable representation of rural and urban populations, representation on the area plan commission is determined as follows:

(1) Seven (7) representatives from each city having a population of more than one hundred five thousand (105,000).

(2) Six (6) representatives from each city having a population of not less than seventy thousand (70,000) nor more than one hundred five thousand (105,000).

(3) Five (5) representatives from each city having a population of not less than thirty-five thousand (35,000) but less than seventy thousand (70,000).

(4) Four (4) representatives from each city having a population of not less than twenty thousand (20,000) but less than thirty-five thousand (35,000).

(5) Three (3) representatives from each city having a population of not less than ten thousand (10,000) but less than twenty thousand (20,000).

(6) Two (2) representatives from each city having a population of less than ten thousand (10,000).

(7) One (1) representative from each town having a population of more than two thousand one hundred (2,100), and one (1) representative from each town having a population of two thousand one hundred (2,100) or less that had a representative before January 1, 1979.

(8) Such representatives from towns having a population of not more than two thousand one hundred (2,100) as are provided for in section 210 of this chapter.

(9) Six (6) county representatives if the total number of municipal representatives in the county is an odd number, or five (5) county representatives if the total number of municipal representatives is an even number.

(d) METRO. The metropolitan development commission consists of ~~eleven (11)~~ **nine (9)** citizen members, as follows:

(1) ~~Five (5)~~ **Four (4)** members, of whom no more than ~~three (3)~~

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two (2) may be of the same political party, appointed by the executive of the consolidated city.

(2) Three (3) members, of whom no more than two (2) may be of the same political party, appointed by the legislative body of the consolidated city.

(3) Two (2) members, who must be of different political parties, appointed by the board of commissioners of the county.

~~(4) One (1) member who represents the township legislative bodies. The procedure for the township legislative bodies for appointing the member shall be established by an ordinance adopted by the legislative body of the consolidated city.~~

SECTION 2. IC 36-7-4-1003 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1003. (a) Each decision of the legislative body under section 918.6 of this chapter or the board of zoning appeals is subject to review by certiorari. Each person aggrieved by a decision of the board of zoning appeals or the legislative body may ~~present~~ **to file with** the circuit or superior court of the county in which the premises affected are located, a verified petition setting forth that the decision is illegal in whole or in part and specifying the grounds of the illegality. No change of venue from the county in which the premises affected are located may be had in any cause arising under this section.

(b) ADVISORY. The person shall ~~present~~ **file** the petition ~~to with~~ the court within thirty (30) days after the date of that decision of the board of zoning appeals.

(c) AREA. The person shall ~~present~~ **file** the petition ~~to with~~ the court within thirty (30) days after the ~~entry~~ **date** of that decision of the board of zoning appeals.

(d) METRO. The person shall ~~present~~ **file** the petition ~~to with~~ the court after the expiration of the period within which an official designated by the metropolitan development commission may file an appeal under section 922 of this chapter but within thirty (30) days after the date of that decision of the board of zoning appeals. However, if the official files an appeal, then only the decision of the metropolitan development commission sitting as a board of zoning appeals is subject to review by certiorari, in accordance with this section. The official or department of metropolitan development may not seek review by certiorari of a decision of a board of zoning appeals or the commission sitting as a board of zoning appeals.

SECTION 3. IC 36-7-4-1005 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1005. (a) On filing a petition for a writ of certiorari with the clerk of the court, the petitioner

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for the writ of certiorari shall give notice of the petition as follows:

(1) If the petitioner is the applicant or petitioner for the use, special exception, or variance, the petitioner shall have a notice served by the sheriff of the county on each adverse party as shown by the record of the case in the office of the board of zoning appeals.

(2) If the petitioner is not the applicant for the use, special exception, or variance and is a person aggrieved by the decision of a board of zoning appeals as set forth in section 1003 of this chapter, the petitioner shall have a notice served by the sheriff of the county on each:

(A) applicant or petitioner for the use, special exception, or variance; and

(B) owner of the property that is the subject of the application or petition for the use, special exception, or variance.

The service of the notice by the sheriff on the chairman or secretary of the board of zoning appeals constitutes notice of the filing of the petition to the board of zoning appeals, to the municipality or county, and to any municipal or county official or board charged with the enforcement of the zoning ordinance. No other summons or notice is necessary when filing a petition.

(b) An adverse party under this section is any property owner whose interests are opposed to the petitioner for the writ of certiorari and who appeared at the hearing before the board of zoning appeals either in person or by a written remonstrance or other document that is part of the hearing record. If the petitioner was an unsuccessful appellant in the administrative appeal, or an unsuccessful petitioner or applicant for a variance, special exception, or special or conditional use, and the record shows a written remonstrance or other document opposing the interest of the petitioner that contains more than three (3) names, the petitioner shall have notice served on the three (3) property owners whose names appear first on the remonstrance or document. Notice to the other persons named is not required.

(c) Notice given under subsection (a) must state:

(1) that a petition for a writ of certiorari, asking for a review of the decision of the board of zoning appeals, has been filed in the court;

(2) the premises affected; and

(3) the date of the decision.

(d) An adverse party who is entitled to notice of a petition for writ of certiorari under subsection (a) is not required to be named

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as a party to the petition for writ of certiorari.

SECTION 4. IC 36-7-4-1006 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1006. ~~On presentation of a petition for a writ of certiorari;~~ The court shall direct the board of zoning appeals, within twenty (20) days after the date ~~of the petition is filed,~~ to show cause why a writ of certiorari should not issue. If the board fails to show to the satisfaction of the court that a writ should not issue, then the court may allow a writ of certiorari directed to the board. The writ must prescribe the time in which a return shall be made to it. This time must not be less than ten (10) days from the date of issuance of the writ, and the court may extend the time.

SECTION 5. IC 36-7-4-1210.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1210.5. (a) ADVISORY. As used in this section, "town" refers to the most populous town in the jurisdiction of the plan commission.

(b) ADVISORY. This section applies to a plan commission operating under a joinder agreement:

- (1) in a county having a population of more than one hundred eight thousand (108,000) but less than one hundred eight thousand nine hundred fifty (108,950); and

(2) containing:

- (A) a township having a population of more than nine thousand (9,000) but less than ten thousand (10,000); or
- (B) a township having a population of more than eight thousand four hundred forty (8,440) but less than eight thousand five hundred (8,500).

(c) ADVISORY. Notwithstanding section 1210 of this chapter, a plan commission described in subsection (b) shall have nine (9) members as follows:

- (1) Two (2) members of the town legislative body, to be appointed by the town executive for a one (1) year term.
- (2) Two (2) town residents who are not elected officials or town employees, to be appointed by the town executive for a four (4) year term.
- (3) One (1) member of the township board, to be appointed by the township executive for a one (1) year term. **However, if there is not a member of the township board willing to serve, five (5) township residents shall be appointed under subdivision (4)(B).**
- (4) **Either:**

- (A) Four (4) township residents who:
 - (i) are not residents of the town; and



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- 1 (ii) are not employees of the town or township;
2 to be appointed by the township executive with the approval
3 of the township legislative body for a four (4) year term, **if a**
4 **member of the township board serves under subdivision**
5 **(3); or**
6 **(B) Five (5) township residents who:**
7 **(i) are not residents of the town; and**
8 **(ii) are not employees of the town or township;**
9 **to be appointed by the township executive with the**
10 **approval of the township legislative body for a four (4)**
11 **year term, if a member of the township board does not**
12 **serve under subsection (3).**

13 SECTION 6. THE FOLLOWING ARE REPEALED [EFFECTIVE
14 JULY 1, 2002]: IC 36-7-4-504.5; IC 36-7-4-608.5.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Governmental and Regulatory Affairs, to which was referred Senate Bill No. 341, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 341 as introduced.)

MERRITT, Chairperson

Committee Vote: Yeas 7, Nays 0.

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ES 341—LS 6858/DI 87+



COMMITTEE REPORT

Mr. Speaker: Your Committee on Local Government, to which was referred Senate Bill 341, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 36-7-4-207 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 207. (a) ADVISORY. In a city having a park board and a city civil engineer, the city plan commission consists of nine (9) members, as follows:

- (1) One (1) member appointed by the city legislative body from its membership.
- (2) One (1) member appointed by the park board from its membership.
- (3) One (1) member or designated representative appointed by the city works board.
- (4) The city civil engineer or a qualified assistant appointed by the city civil engineer.
- (5) Five (5) citizen members, of whom no more than three (3) may be of the same political party, appointed by the city executive.

(b) ADVISORY. If a city lacks either a park board or a city civil engineer, or both, subsection (a) does not apply. In such a city or in any town, the municipal plan commission consists of seven (7) members, as follows:

- (1) The municipal legislative body shall appoint three (3) persons, who must be elected or appointed municipal officials or employees in the municipal government, as members.
- (2) The municipal executive shall appoint four (4) citizen members, of whom no more than two (2) may be of the same political party.

(c) AREA. To provide equitable representation of rural and urban populations, representation on the area plan commission is determined as follows:

- (1) Seven (7) representatives from each city having a population of more than one hundred five thousand (105,000).
- (2) Six (6) representatives from each city having a population of not less than seventy thousand (70,000) nor more than one hundred five thousand (105,000).
- (3) Five (5) representatives from each city having a population of not less than thirty-five thousand (35,000) but less than seventy

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thousand (70,000).

(4) Four (4) representatives from each city having a population of not less than twenty thousand (20,000) but less than thirty-five thousand (35,000).

(5) Three (3) representatives from each city having a population of not less than ten thousand (10,000) but less than twenty thousand (20,000).

(6) Two (2) representatives from each city having a population of less than ten thousand (10,000).

(7) One (1) representative from each town having a population of more than two thousand one hundred (2,100), and one (1) representative from each town having a population of two thousand one hundred (2,100) or less that had a representative before January 1, 1979.

(8) Such representatives from towns having a population of not more than two thousand one hundred (2,100) as are provided for in section 210 of this chapter.

(9) Six (6) county representatives if the total number of municipal representatives in the county is an odd number, or five (5) county representatives if the total number of municipal representatives is an even number.

(d) METRO. The metropolitan development commission consists of ~~eleven (11)~~ **nine (9)** citizen members, as follows:

(1) ~~Five (5)~~ **Four (4)** members, of whom no more than ~~three (3)~~ **two (2)** may be of the same political party, appointed by the executive of the consolidated city.

(2) Three (3) members, of whom no more than two (2) may be of the same political party, appointed by the legislative body of the consolidated city.

(3) Two (2) members, who must be of different political parties, appointed by the board of commissioners of the county.

~~(4) One (1) member who represents the township legislative bodies. The procedure for the township legislative bodies for appointing the member shall be established by an ordinance adopted by the legislative body of the consolidated city."~~

Page 3, after line 25, begin a new paragraph and insert:

"SECTION 5. IC 36-7-4-1210.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1210.5. (a) ADVISORY. As used in this section, "town" refers to the most populous town in the jurisdiction of the plan commission.

(b) ADVISORY. This section applies to a plan commission operating under a joinder agreement:

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(1) in a county having a population of more than one hundred eight thousand (108,000) but less than one hundred eight thousand nine hundred fifty (108,950); and

(2) containing:

(A) a township having a population of more than nine thousand (9,000) but less than ten thousand (10,000); or

(B) a township having a population of more than eight thousand four hundred forty (8,440) but less than eight thousand five hundred (8,500).

(c) ADVISORY. Notwithstanding section 1210 of this chapter, a plan commission described in subsection (b) shall have nine (9) members as follows:

(1) Two (2) members of the town legislative body, to be appointed by the town executive for a one (1) year term.

(2) Two (2) town residents who are not elected officials or town employees, to be appointed by the town executive for a four (4) year term.

(3) One (1) member of the township board, to be appointed by the township executive for a one (1) year term. **However, if there is not a member of the township board willing to serve, five (5) township residents shall be appointed under subdivision (4)(B).**

(4) **Either:**

(A) Four (4) township residents who:

(i) are not residents of the town; and

(ii) are not employees of the town or township;

to be appointed by the township executive with the approval of the township legislative body for a four (4) year term, **if a member of the township board serves under subdivision (3); or**

(B) Five (5) township residents who:

(i) are not residents of the town; and

(ii) are not employees of the town or township;

to be appointed by the township executive with the approval of the township legislative body for a four (4) year term, **if a member of the township board does not serve under subsection (3).**

SECTION 6. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2002]: IC 36-7-4-504.5; IC 36-7-4-608.5".

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Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.

(Reference is to SB 341 as printed January 25, 2002.)

STEVENSON, Chair

Committee Vote: yeas 9, nays 0.

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